

**REMARKS**

This responds to the Office Action mailed on May 2, 2008. Reconsideration is respectfully requested.

Claims 1, 3, 4, 7, 8, 12, 14, 15, 17 and 19 are amended, claims 5, 6, 9 – 11, 16, 18, 20 – 22 and 24 – 32 and 34 – 35 are canceled, and no claims are added; as a result, claims 1, 3, 4, 7, 8, 12, 14, 15, 17 and 19 are now pending in this application. Claims 2, 13, 23, and 33 were canceled previously.

**§102 Rejection of the Claims**

Claims 1, 12, 22, 29 and 32 were rejected under 35 U.S.C. § 102(e) as being anticipated by Costa et al. (U.S. 2005/0044464). Claims 22, 29 and 32 have been cancelled.

The applicants respectfully submit that Costa is not prior art under 35 U.S.C. §102(e). The above-identified application was filed on March 29, 2004, before Costa was published as a U.S. Published Application. Costa derives from a PCT application number PCT/DE2002/003590, having an international (PCT) filing date of September 23, 2002. A copy the biographical data for PCT/DE2002/003590 from WIPO is attached. As indicated, Costa (PCT/DE2002/003590) was published in German and was not published in English.

The MPEP has set forth examination guidelines for applying references under 35 U.S.C. §102(e) (see MPEP 706.02(f)(1)). An international application that was not published in English cannot be used as a reference under 35 U.S.C. §102(e) as of its international filing date. MPEP page 700-28, column 1, paragraph (2). The international application from which Costa claims priority was not published in English. Accordingly, the rejection of claims 1 and 12 under 35 U.S.C. § 102(e) as being anticipated by Costa has been overcome.

Claims 1, 12, 22, 24, 29 and 32 were also rejected under 35 U.S.C. § 102(e) as being anticipated by Guo et al. (U.S. 6,937,591). Claims 22, 24, 29 and 32 have been canceled.

Applicant's claim 1, as amended is directed to a method for protecting packet transmissions by a multi-mode wireless communication station operating in a wireless network. Applicant's claim 12 is directed to the multi-mode wireless communication station. As recited in

claims 1 and 12, the multi-mode wireless communication station is configurable to transmit using either orthogonal frequency division multiplexed (OFDM) modulation or direct sequence spread spectrum/complementary code keying (DSSS/CCK) modulation. As recited in claims 1 and 12, information is collected to identify a legacy communication station currently operating in the network, and time periods for successful transmission of a data packet are estimated.

As recited in claims 1 and 12, the time periods include a time period ( $T_{CTS}$ ) to successfully transmit the data packet using the OFDM modulation with request-to-send/clear-to-send (RTS/CTS) protection, a time period ( $T_{RTS}$ ) to successfully transmit the data packet using the OFDM modulation with CTS-to-self protection, and a time period ( $T_{CCK}$ ) to successfully transmit the packet using the DSSS/CCK modulation without protection.

As further recited in claims 1 and 12, the modulation and protection having the shortest of the time period for transmitting the data packet is selected when a legacy communication station has been identified.

These recitations of Applicant's amended claims 1 and 12 are neither taught, suggested or motivated by Guo. Guo is directed to determining a *value for a contention window* based on failure probability and includes differentiation for QOS requirements (see column 2, lines 2 – 9). Applicant finds no teaching, suggestion or motivation in Guo to estimate time periods for different modulation types and protection mechanisms for successful transmission of a data packet, and select the shortest time period if a legacy station is operating.

Accordingly, the rejection of claims 1 and 12 under 35 U.S.C. § 102(e) as being anticipated by Guo has been overcome.

#### §103 Rejection of the Claims

Claims 3-11, 14-21, 25-28, 30, 31, 34 and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Guo et al. in view of Choi et al. (U.S. 2003/0169763). Claims 5, 6, 9 – 11, 16, 18, 20 – 21 and 25 – 28, 31, 32, 34 and 35 have been cancelled.

Claims 3, 4, 7 and 8 are believed to be allowable at least because of their dependency on claim 1, which as discussed above, is believed to be allowable. Claims 14, 15, 17 and 19 are believed to be allowable at least because of their dependency on claim 12, which as discussed

above, is believed to be allowable. Claims 3, 4, 7, 8, 14, 15, 17 and 19 are believed to further distinguish over the cited references discussed below.

Choi has been cited for the transmission of a beacon signal to indicate a contention-free period (CFP) followed by a contention period, and determining whether transmission is possible during the CFP. Choi, however, does not teach, suggest or motivate the estimation of three time periods for the different modulation types and different protection mechanisms. Choi, furthermore, does not teach, suggest or motivate the selection of the shortest time period if a legacy station is operating. In Choi, there is no selection of modulation and protection. In Choi, OFDM modulated data is simply transmitted (if possible) before a contention-free period ends to prevent collisions with DSSS/CCK modulated data (see Choi abstract).

Accordingly, the combination of Guo and Choi does not result in Applicant's claims 3, 4, 7, 8, 14, 15, 17 and 19. The rejection of claims 3, 4, 7, 8, 14, 15, 17 and 19 under 35 U.S.C. § 103(a) is believed to be overcome.

### **CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (480) 659-3314 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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